

# OFFICE OF LEGISLATIVE LEGAL SERVICES

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### SENIOR ATTORNEY FOR SPECIAL PROJECTS

Edward A. DeCecco

### SENIOR ATTORNEY FOR ANNOTATIONS

Michele D. Brown



200 EAST COLFAX AVENUE SUITE 091  
DENVER, COLORADO 80203-1716

TEL: 303-866-2045 FAX: 303-866-4157

E-MAIL: OLLS.GA@STATE.CO.US

### MANAGING SENIOR ATTORNEYS

Jennifer A. Berman Robert S. Lackner  
Kristen J. Forrestal Nicole H. Myers  
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### SENIOR ATTORNEYS

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## MEMORANDUM

TO: Interested Persons

FROM: Office of Legislative Legal Services

DATE: February 16, 2022

SUBJECT: Explanation of H.B. 22-1165, the Rule Review Bill

### Explanation of the Rule Review Process

Since 1976, executive agencies have been required by section 24-4-103 (8)(d), C.R.S., of the State Administrative Procedure Act (APA) to submit their rules to the General Assembly for review.

Under section 24-4-103 (8)(c)(I), C.R.S., all rules adopted or amended during any one-year period that begins each November 1 and continues through the following October 31 expire on the May 15 that follows the one-year period, unless the General Assembly by bill acts to postpone the expiration.

Every newly adopted or amended rule is submitted by the adopting agency to the Office of Legislative Legal Services, where the rule is reviewed to determine whether the rule is within the agency's rule-making authority and consistent with law. If the Office finds a possible problem with a rule, and if the Office is unable to resolve the problem with the agency, the Office prepares a memorandum on the issue and presents the issue to the Committee on Legal Services after notice to the affected agency. At the committee hearing, an attorney with the Office explains why the rule lacks statutory authority or conflicts with the law and argues that the rule should not be extended beyond the May 15 expiration date. The committee gives the affected agency an opportunity to respond and gives members of the public or other interested parties an opportunity to speak on the issue. After hearing all the testimony and asking questions,

the committee then takes a vote to determine whether the rule should be extended beyond the May 15 expiration date.

Each year, the committee sponsors a bill (the annual rule review bill) that extends the rules adopted or amended during the previous year (i.e., those rules scheduled to expire on May 15); except that the bill specifically allows the expiration of those rules that the committee voted not to extend beyond the May 15 expiration date. H.B. 22-1165 is the committee's annual rule review bill for 2022.

## **Explanation of H.B. 22-1165**

The following is an explanation of the rule not extended by H.B. 22-1165:

**Rules of the State Personnel Board and State Personnel Director, Department of Personnel, concerning Paid Family Medical Leave, 4 CCR 801-1 (LLS Docket No. 210212; SOS Tracking No. 2020-00966).**

*Staff: Ed DeCecco*

### Explanation:

Section 24-50-104 (1)(g), C.R.S., requires the state personnel director to prescribe leave benefits that are typically consistent with prevailing practices, but the director's Rule 5-16 conflicts with the statute because it establishes paid family medical leave (PMFL), which is not typically consistent with prevailing practices.

Agency position: The agency contested the staff recommendation not to extend Rule 5-16, arguing that the rule was typically consistent with prevailing practices.